STATE OF MICHIGAN
IN THE SUPREME COURT

DEAN ALTOBELLI,

Plaintiff/Appellee/Cross-Appellant,

v

MICHAEL W. HARTMANN, MICHAEL P. COAKLEY, ANNA M. MAIURI, JOSEPH M. FAZIO, DOUGLAS M. KILBOURNE, JOHN D. LESLIE, AND JEROME R. WATSON,

Defendants/Appellants/Cross-Appellees.

Supreme Court No. 150656

Court of Appeals No. 313470
(Judges Borrello, Servitto and Beckering)

Lower Court No. 12-635-CZ
Ingham County Circuit Court
Hon. Paula Manderfield

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REPLY TO RESPONSE TO APPLICATION FOR LEAVE TO APPEAL

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I. DISCUSSION

Plaintiff alleges he was undercompensated as a partner of Miller Canfield ("the Firm"), and challenges the determination that he had withdrawn from the Firm as being an unauthorized de facto expulsion accomplished without a vote of Miller Canfield's principals, the Firm's owners. At page 2 of his Response, he essentially concedes that his dispute implicates Miller Canfield's arbitration clause:

> In short, the core of Mr. Altobelli's complaint in this case is the allegation that defendants wrongfully deprived him of his ownership rights without a vote of the firm's owners.

Plaintiff's right to a vote on his ownership status exists, if at all, only by virtue of the Firm's Operating Agreement. And if the Defendants deprived him of such a right, they did so only by acting as and for the Firm, in their roles as managers elected by the Firm's principals. Plaintiff thus squarely frames a violation of the Firm's Operating Agreement as "the core" of this dispute. By the same token, Plaintiff's complaints about his compensation and other aspects of his treatment by the Firm are disputes with the Firm, not with the individuals who made those decisions for the Firm.

This is not an insignificant dispute that has no impact on anyone but the parties. The Court of Appeals adopted a reading of the Operating Agreement's arbitration clause that clashes with its plain language, with extensive case law in this and other jurisdictions, and with the Federal Arbitration Act. Its opinion is published, and if left standing would undermine prior decisions of this Court and the Court of Appeals, and would put Michigan bizarrely out of step with other jurisdictions. This Court should avert that threat.

A. The Nature Of This Dispute Makes It Arbitrable.

It is the law in this state and other jurisdictions that the nature of the underlying dispute will determine whether it is subject to the Operating Agreement's arbitration clause. Plaintiff could not more tellingly describe his dispute as one with the Firm, and the arbitration clause in the Firm's Operating Agreement surely was not drafted to give Plaintiff, or any disgruntled former principal, the option of evading arbitration by recasting his grievances against the Firm as tort claims against the individuals tasked with making the Firm's decisions. A recent decision of the United States Court of Appeals for the First Circuit, *Grand Wireless, Inc. v Verizon Wireless Inc*, 748 F3d 1, 11 (1st Cir 2014), reaffirms the well-established principle that individuals acting as agents will be covered by their principal's arbitration clause, even though they are not signatories to it, or named in it. The court observed:

> Such a rule [to cover agents under their principal's arbitration clause] is necessary, our sister circuits have reasoned, because a corporate entity or other business can only operate through its employees and an arbitration agreement would be a meaningless arrangement if its terms did not extend to them. Any other rule, in the view of these courts, would permit the party bringing the complaint to avoid the practical consequences of having signed an agreement to arbitrate; naming the other party's officers, directors or employees as defendants along with the corporation would absolve the party of all obligations to arbitrate.

As Miller Canfield explained in its Application (at 11-17), this reasoning has been endorsed by several federal circuits and followed by numerous Michigan Court of Appeals panels, who apparently found it too indisputable to warrant discussing in a published opinion. The Court of Appeals' analysis also conflicts with this Court's approach in *Hall v Stark Reagan, PC*, 493 Mich 903; 823 NW2d 274 (2012), which illustrates that an arbitration clause in a law firm shareholders' agreement should be read to encompass all disputes related to actions

governed by the agreement. This Court should grant leave to appeal and reverse the decision below to correct an aberration that purports to call into question well-established legal principles.

B. Contract Interpretation Principles Do Not Warrant A Different Result.

Reciting from this Court's recent contract law jurisprudence, Plaintiff insists that the Operating Agreement's Section 3.6 must be read restrictively so as to preclude arbitration of any claims that one former principal brings against other Firm principals. No matter, says Plaintiff, that the dispute originates in how Defendants interpreted the Operating Agreement while they were acting as Firm Managers or department heads; all that matters is that he is pursuing them only as individuals.

Plaintiff's interpretation of the arbitration language is beyond crabbed – it is absurd. Section 3.6 expresses the intention of the Firm and all signing principals (including Altobelli) to have all disagreements about the status and compensation of principals resolved in arbitration:

> Alternative Dispute Resolution: Mandatory Arbitration. Any dispute, controversy or claim . . . between the Firm or the Partnership and any current or former Principal or Principals of the Firm or current or former partner or partners of the Partnership . . . of any kind or nature whatsoever (including, without limitation, any dispute controversy or claim regarding step placement, or compensation, or the payment or non-payment of any bonus, the amount or change in amount of any bonus) shall be solely and conclusively resolved according to the following procedure. . . .(Emphasis added.)

There is no distinction between a claim that the Firm acted wrongfully by treating Plaintiff as having withdrawn and by undercompensating him for his efforts – a claim Plaintiff agrees would be arbitrable – and a claim against the individuals making those decisions for the Firm – a claim Plaintiff says is not arbitrable. It defies belief that the principals signing the Operating Agreement meant to have the former resolved in arbitration while the latter, arising from the same decisions by the same Firm leaders, would be litigated in Court. Plaintiff's reading would

mean that any principal who was dissatisfied with his or her compensation or bonus – subjects expressly identified as within the arbitration clause – could sue the members of the compensation committee in court for undercompensating them due to some personal motivation.

The dichotomy – allowing lawsuits against the Firm's managers, but not against the Firm itself – is an absurd and unreasonable interpretation of Section 3.6. Moreover, reading the clause as a whole and noting the subjects it is intended to cover, reveals the implausibility of Plaintiff's argument. See generally, *Klapp v United Ins Group Agency Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

C. Plaintiff's False "Standard Language" Argument.

Plaintiff maintains that the arbitration clause lacks so-called "standard language" because it does not specifically refer to the Operating Agreement of which it is a part. He is simply wrong – Miller Canfield's broad arbitration clause is typical of agreements with which the arbitration clause is intended to deal. Plaintiff nevertheless writes at page 12 of his Response:

> . . . [T]he Miller Canfield Operating Agreement's arbitration provision is also noteworthy . . . [because] that provision does *not* contain what is considered standard language that would limit the scope of arbitration. Generally, arbitration clauses limit mandatory arbitration to disputes "arising out of or relating to" the provisions of the agreement.

According to Plaintiff, the absence of this "standard" arbitration clause language[1] distinguishes *Rooyakker & Sitz v Plante & Moran, LLC*, 276 Mich App 146; 742 NW2d 409 (2007), which would otherwise support Miller Canfield's position:

> What defendants do not do, however, is explain how it is that the holding in *Rooyakker* actually offers support for their position in this case.

[1] Plaintiff cites no authority for his statement that the language he identifies makes an arbitration clause "standard," and certainly no authority holding that an arbitration clause is "substandard" and cannot be read broadly unless it contains language along these lines.

> The simple fact is that it does not. *Rooyakker* is a decision that is predicated on the language of the arbitration provision in the employment agreement that the plaintiffs and Plante & Moran signed in that case. All that the Court of Appeals did in *Rooyakker* was to find that the expansive language in that agreement – making arbitration the appropriate method for resolving "any dispute or controversy arising out of or relating to the agreement" – was sufficient to allow arbitration as to nonsignatories to the agreement. (Response, p 17.)

Plaintiff's position is impossibly contorted. Miller Canfield's arbitration clause covers "[a]ny dispute, controversy or claim . . . between the Firm or the Partnership and any current or former principal or principals of the Firm or current or former partner or partners." It cannot be disputed that this all-encompassing language covers disagreements "arising out of or relating to" the Firm's Operating Agreement – what else could it conceivably cover? Plaintiff cannot use the absence of "limiting" language to argue that the arbitration clause should be read more narrowly than if the "limiting" language were present.

Plaintiff's silly hypothetical about a dispute between principals over who would be the starting pitcher of a softball game – a *reductio ad absurdum* argument – proves the opposite of what Plaintiff intends (Response, pp 14-15). He would have the arbitration clause be completely meaningless – not covering any dispute – because it does not specifically refer to the Operating Agreement. Michigan courts disapprove of readings that would render a part of a contract completely meaningless. *Klapp v United Ins Group Agency Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003), and *McCoig Materials, LLC v Galui Construction Inc*, 295 Mich App 684, 694; 818 NW2d 410 (2012). Of course the arbitration clause must cover disputes under the Firm's Operating Agreement, and that is what this case is all about.

Again, permitting the Court of Appeals' odd interpretation of the arbitration agreement to stand would wreak lasting damage and confusion in Michigan law. This case is not the offbeat

oddity Plaintiff claims. Allowing an extremely broad arbitration clause to be evaded so easily would upset decades of precedent (including this Court's *Stark Reagan* decision) giving such clauses proper respect.

D. While The Instant Dispute Is Arbitrable Under Michigan Law, The Federal Arbitration Act Would Also Compel Arbitration Of The Dispute.

Michigan courts are bound under the Supremacy Clause of the United States Constitution to enforce the Federal Arbitration Act, 9 USC 1 *et seq.*[2] *Nitro-Lift Products, LLC v Howard*, __ US __; 133 S Ct 500, 503 (2012); *DeCaminada v Coopers & Lybrand*, 232 Mich App 492, 495; 591 NW2d 364 (1998). Under the FAA judicial analysis of whether the parties agreed to arbitrate a particular matter must be conducted "with the federal policy in favor of arbitration in mind, such that, 'as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability." *Grand Wireless, Inc v Verizon Wireless Inc, supra*, at 7, quoting *Mitsubishi Motors Corp v Soler Chrysler-Plymouth Inc*, 473 US 614, 626; 105 S Ct 3346 (1985).

Miller Canfield's arguments in the foregoing sections, and in its Application, disclose only one reasonable reading of Section 3.6: The Firm, and the principals who together own and constitute the Firm, provided that all disputes among them would be resolved through arbitration. If there were any ambiguity on this point, the FAA would require it to be resolved in favor of arbitration. See *Grand Wireless Inc, supra*, at 7 ("At a minimum, this policy [favoring arbitration] requires that 'ambiguities as to the scope of the arbitration clause itself [must be] resolved in favor of arbitration'"), quoting *Volt Info Sciences, Inc v Bd of Trustees of Leland Stanford Jr Univ*, 489 US 468, 475-476; 109 S Ct 1248 (1989). This case would also present an

[2] There can be no doubt that the Federal Arbitration Act applies here, since Miller Canfield, a Firm with offices and clients in many states, engages in interstate commerce.

opportunity for this Court to clarify the interplay between the FAA and Michigan arbitration law, a subject it has not previously addressed.

E. Plaintiff's Effort To Make Section 3.3 Of The Operating Agreement Meaningless.

Finally, Plaintiff attempts to dismiss section 3.3 of the Operating Agreement as inapplicable to this dispute on the notion that it merely "serves to confirm that [Miller Canfield principals] are bound by the terms of that agreement." Plaintiff overlooks, however, that Section 3.3 not only obligates the parties (i.e., binds them), but also states that all parts of the Agreement "shall inure to the benefit . . . [of the Firm's principals]." In other words, where a benefit is provided, each principal is entitled to that benefit. Each Defendant named in Plaintiff's Complaint is a signatory to the Firm's Operating Agreement, and the privacy and efficiency of arbitration is a "benefit" on which each may rely. Plaintiff cannot explain why the arbitration clause can reasonably be read to cover, and thus protect from litigation, only the Firm, and not the Firm's principals who are entitled to its protections as well.

II. CONCLUSION

For the foregoing reasons, Miller Canfield requests that its Application for Leave to Appeal be granted, or, alternatively, that the Court of Appeals' ruling pertaining to arbitrability of this dispute be peremptorily reversed.

Respectfully submitted,

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Dated: April 2, 2015
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 2, 2015, I electronically filed the foregoing **Reply to Response to Application for Leave to Appeal** and this **Certificate of Service,** using the TruFiling system, which will send notification of such filing to Mark Granzotto, Dean Altobelli, and John Oostema.

/s/ Maribeth Lindquist
Maribeth Lindquist

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